

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Service Quality, Customer Satisfaction,	)	WC Docket No.
Infrastructure and Operating Data	)	08-190
Gathering)	
)	
Petition of AT&T Inc. for Forbearance	)	WC Docket No.
Under 47 U.S.C. § 160(c) From Enforcement	)	07-139
of Certain of the Commission's)	
ARMIS Reporting Requirements)	
)	
Petition of Qwest Corporation for)	
Forbearance from Enforcement of the)	
Commission's ARMIS and 492A Reporting)	
Requirements Pursuant to 47 U.S.C.)	
§ 160(c))	
)	
Petition of the Embarq Local Operating	)	WC Docket No.
Companies for Forbearance Under 47 U.S.C.	)	07-204
§ 160(c) From Enforcement of Certain of)	
ARMIS Reporting Requirements)	
)	
Petition of Frontier and Citizens ILECs)	
for Forbearance Under 47 U.S.C. § 160(c))	
From Enforcement of Certain of the)	
Commission's ARMIS Reporting Requirements)	
)	
Petition of Verizon for Forbearance Under	)	WC Docket No.
47 U.S.C. § 160(c) From Enforcement of	)	07-273
Certain of the Commission's)	
Recordkeeping and Reporting Requirements)	
)	
Petition of AT&T Inc. For Forbearance	)	WC Docket No.
Under 47 U.S.C. § 160 From Enforcement of	)	07-21
Certain of the Commission's Cost)	
Assignment Rules)	

TO: The Commission

COMMENTS OF THE RURAL VERMONT ITCs

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SUMMARY

Franklin Telephone Company, Ludlow Telephone Company, Northfield Telephone Company, Perkinsville Telephone Company, Shoreham Telephone Company, Inc., Topsham Telephone Company and Waitsfield-Fayston Telephone Company, Inc. (collectively, the Vermont ITCs), by their attorney, hereby submit these comments in response the Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 08-203, released September 6, 2008 (NPRM), in the captioned proceedings.

In 2001, a group of Vermont incumbent local exchange carriers (ILECs) (which included the Rural Vermont ITCs) opposed the Commission's proposal to extend service quality reporting to small ILECs. The Rural Vermont ITCs continue to oppose any requirement to file service quality reports at the federal level, and oppose the new proposals to extend other ARMIS-type reports to small ILECs. Then, as now, the Commission failed to provide any justification for the proposed reporting requirement. As the Office of Management and Budget (OMB) said in 2001, the imposition of such burdens without any benefit violates the Paperwork Reduction Act. The NPRM also does not comply with the Regulatory Flexibility Act, the Administrative Procedure Act and the Small Business Paperwork Relief Act of 2002.

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TO: The Commission and the Office
of Management and Budget

COMMENTS OF THE RURAL VERMONT ITCs

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¹ Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, Memorandum Opinion and Order and Notice of Proposed Rulemaking, WC Dockets No. 08-190, 07-139, 07-204, 07-273, 07-21, FCC 08-203 (rel. Sept. 6, 2008) [hereinafter NPRM].

the Small Business Paperwork Relief Act of 2002. These issues are addressed in these comments and two separate comments filed today by the Rural Vermont ITCs.²

BACKGROUND

The Rural Vermont ITCs are small ILECs serving rural areas of Vermont. In addition to providing local exchange service, the Rural Vermont ITCs and their affiliates provide broadband service and long distance service.

Several of them serve fewer than 2000 lines. They all have fewer than 1500 employees (the size threshold for small businesses under the Regulatory Flexibility Act).³ Indeed, they all have fewer than 100 employees, and most of the Rural Vermont ITCs have fewer than 25 employees (the size threshold for small businesses under the Small Business Paperwork Relief Act of 2002).⁴ Given their small size and correspondingly small staff, they are especially impacted by any increased regulatory reporting requirements.

² Comments of the Rural Vermont ITCs on the Initial Regulatory Flexibility Analysis, WC Dockets No. 08-190, 07-139, 07-204, 07-273, 07-21, FCC 08-203 (filed Nov. 14, 2008); Comments of the Rural Vermont ITCs on the Information Collections, WC Dockets No. 08-190, 07-139, 07-204, 07-273, 07-21, FCC 08-203 (filed Nov. 14, 2008).

³ NPRM app. C para. 5.

⁴ NPRM para. 44.

I. THE COMMISSION DOES NOT GIVE ANY REASONS FOR THE PROPOSED REPORTING REQUIREMENTS

The point of the NPRM appears to be to find a use for ARMIS reports. But the Commission has the rulemaking processing backwards. The Commission should first determine why it needs to collect data.

In the NPRM, the Commission asserts that it could use data to aid the Commission's public safety and broadband policymaking, and could make the data available to consumers to help them make informed choices.⁵ The Commission does not explain why it needs more data for public safety and broadband policymaking, and why the data it already has is not sufficient. Similarly, the Commission does not explain why consumers need data that is not already available elsewhere and why the data should be provided at the federal level. The Commission has not pointed to any complaints at the state or federal level that would justify reporting burdens on small ILECs.

The only justification for releasing the NPRM appears to be the fact that the Commission acted on ARMIS forbearance requests filed by large ILECs. Surely, a decision to forbear from ARMIS reports for large ILECs is no basis for extending ARMIS reports to all carriers.

⁵ Id. paras. 34-35.

II. THE PROPOSED REPORTING REQUIREMENTS WOULD BE BURDENSOME

The NPRM does not even begin to estimate the burden of the proposed reporting requirements on small ILECS. The Commission has previously estimated the staff hours involved in producing the ARMIS Reports 43-05, 43-06, 43-07 and 43-08 (i.e., the ARMIS Reports at issue in this NPRM) to be about 1500 hours per year per company.⁶ And those estimates applied to companies that already may have had sophisticated switches, back office systems and survey mechanisms in place and ready to generate ARMIS data and reports.

For small ILECs to begin to generate ARMIS-type data, they may need to upgrade switch software, invest in new back office systems, or perhaps hire new staff to manually generate the data for the proposed reports. To generate customer satisfaction data, the small ILECs would need to start surveying customers about whatever issues are determined by the Commission. The cost of modifying internal procedures, upgrading or replacing systems,

⁶ Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, 73 Fed. Reg. 43,933 (FCC July 29, 2008) (319 hours for each of ARMIS Reports 43-05 and 43-07); Public Information Collection(s) Approved by Office of Management and Budget, 71 Fed. Reg. 29,961 (FCC May 16, 2006) (720 hours for ARMIS Report 43-06); Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, 72 Fed. Reg. 5715 (FCC Feb. 7, 2007) (139 hours for ARMIS Report 43-08).

surveying customers, and hiring staff could range from tens of thousands of dollars to hundreds of thousands of dollars, depending on the size of the ILEC and the regulations that the Commission would adopt. These small ILECs would need to divert resources away from making system improvements that impact end users, such as broadband deployment - with no apparent benefit for those end users.

III. THE OMB AGREED WITH THE VERMONT COMPANIES IN 2001; IT REJECTED THE PROPOSED REPORTING REQUIREMENT

Eight years ago, in the Biennial Review Service Quality Reporting Requirements Notice, the Commission proposed to extend service quality reporting (ARMIS Report 43-05) to all ILECs.⁷ A group of Vermont ILECs, including the Rural Vermont ITCs here, filed comments in that proceeding, and showed that the proposed reporting requirements were unjustified and would be unduly burdensome.⁸ In response to those comments, the OMB stated:

The comments we received show a considerable cost for the reporting requirement, but do not include

⁷ 2000 Biennial Regulatory Review - Telecommunications Service Quality Reporting Requirements, Notice of Proposed Rulemaking, CC Docket. No. 00-229, 15 FCC Rcd. 22,113, 22,122 (2000).

⁸ Comments of the Vermont ITCs on Proposed Information Collections, CC Docket No. 00-229 (dated Jan. 3, 2001); see also Comments of the Vermont ITCs, CC Docket No. 00-229 (dated Jan. 12, 2001); Reply Comments of the Small Independent Telephone Companies, CC Docket No. 00-229 (dated Feb. 16, 2001).

discussion of benefits. Absent a significant benefit being shown, we do not approve the extension in this proposal pursuant to the Paperwork Reduction Act.⁹

The same is true here. The Commission has proposed to extend the service quality reporting requirements to all carriers, and has not shown any benefit to imposing the proposed reporting requirements on any carriers, let alone small ILECs such as the Rural Vermont ITCs. To make matters worse, the Commission also has now proposed to extend other ARMIS-type reporting requirements on small ILECs and other carriers. These proposed reporting requirements violate the Paperwork Reduction Act just as the previous proposed service quality reporting requirements violated the Paperwork Reduction Act.

IV. THE NPRM VIOLATES THE ADMINISTRATIVE PROCEDURE ACT

Pursuant to the Administrative Procedure Act, the Commission needs to specify the reasons for adopting rules before it releases a notice of proposed rulemaking.¹⁰ As discussed above, the Commission did not do so when it released the NPRM. Thus,

⁹ Letter from Edward Springer, OMB, to Judy Boley, FCC, CC Docket No. 00-229 (Jan. 29, 2001).

¹⁰ Connecticut Light & Power Co. v. Nuclear Regulatory Comm'n, 673 F.2d 525, 530 (D.C. Cir. 1982) (interested parties need to have an accurate picture of the reasoning that led the agency to propose the rules). Earlier this year, the courts reminded the Commission of the need to make public its reasons for proposing regulations. American Radio Relay League, Inc. v. FCC, 524 F.2d 227, 236-40 (D.C. Cir. 2008).

the NPRM violates the Administrative Procedure Act.

V. TO REMEDY THIS SITUATION, TERMINATE THE PROCEEDING OR EXEMPT SMALL ILECs

To remedy this situation, the Commission could terminate the NPRM, or at a minimum, exempt small ILECs from the proposed reporting requirements, consistent with the Regulatory Flexibility Act, the Paperwork Reduction Act and the Small Business Paperwork Relief Act (as discussed in other comments filed by the Rural Vermont ITCs on this date).

CONCLUSION

As shown above, the Commission should heed the OMB's warning about imposing ARMIS-type reporting burdens without clear benefits. The NPRM violates the Paperwork Reduction Act and the Administrative Procedure Act. To resolve this situation, the Commission could: (a) terminate this proceeding; or (b) proceed with the NPRM and exempt small ILECs from any reporting requirements adopted in this proceeding.

Respectfully submitted,
RURAL VERMONT ITCs

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November 14, 2008

CERTIFICATE OF SERVICE

I, Susan J. Bahr, Law Offices of Susan Bahr, PC, certify that on this 14th day of November, 2008, I have sent a copy of the foregoing to the following:

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